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NO. 1218

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

THE STATE OF TEXAS, ~~et al.,~~
Appellant

vs.

UNITED STATES OF AMERICA,
Appellee

On Appeal from the United States District Court for the Western District of Texas, Austin Division

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JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

This is an appeal from the judgment of the United States District Court for the Western District of Texas, Austin Division, sitting as a three-Judge Court, holding unconstitutional under the Fourteenth Amendment the provisions in the Constitution and statutes of the State of Texas which provide that payment of the poll tax levied under authority of the State of Texas is a prerequisite for voting in state and local elections, and enjoining enforcement of the provisions in any election held within the State of Texas.

Opinion Below

The opinion of the District Court has not yet been reported. The opinion and judgment are set out in the appendix to this Jurisdictional Statement.

Jurisdiction

The United States, through its Attorney General, instituted this suit pursuant to Section 10(b) of the Voting Rights Act of 1965 and 42 U.S.C. §1971(c), alleging that the District Court had jurisdiction under Section 10(c) of the Voting Rights Act of 1965, 42 U.S.C. §1971(d), 28 U.S.C. §1345, and 28 U.S.C. §2281.

Plaintiff prayed for a declaration that the provisions of Texas law under attack are invalid under the Constitution of the United States, including the due process and equal protection clauses of the Fourteenth Amendment, and the Fifteenth Amendment thereof, and under 42 U.S.C. 1971(a), and asked that defendants be enjoined from giving effect to the provisions. A three-Judge Court was convened to hear the case, as required by 28 U.S.C. §§2281 and 2284.

On February 9, 1966, the District Court entered its opinion and judgment holding that the provisions under attack violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution and enjoining their enforcement.

On March 1, 1966, the defendant the State of Texas filed with the clerk of the District Court its Notice of Appeal to the Supreme Court of the United States. Jurisdiction of this appeal is conferred on the Supreme Court by 28 U.S.C. §1253 and by Sec. 10(c) of the Voting Rights Act of 1965.

State Laws Involved in the Case

Article 2.01 of Title 122A, Taxation—General, of the Revised Civil Statutes of Texas, 1925, as amended, levies an annual state poll tax against every resident of the State who is between 21 and 60 years old. This statute reads:

> "There shall be levied and collected from every person between the ages of twenty-one and sixty years on the first day of January of each year and resident within this state on that date, an annual state poll tax of one dollar and fifty cents, one dollar of which shall be for the benefit of the free schools and fifty cents for general revenue purposes; provided, however, that the fifty-cent portion of the tax for general revenue purposes shall not be levied and collected from persons insane or blind, those who have lost a hand or foot, those permanently disabled, and disabled veterans of foreign wars where such disability is forty per cent or more, or from members of the active militia of this state who are exempt therefrom under the provisions of Article 5840 and 5841 of the Revised Civil Statutes of Texas, 1925. The tax shall be collected and accounted for by the tax collector each year and appropriated as herein required. The tax shall be paid at any time between the first day of October and the thirty-first day of January following, both dates inclusive, and shall be paid in the county in which the taxpayer resides at the time of payment; and the person, when he pays it, shall be entitled to his poll tax receipt, even if his other taxes are unpaid. No county shall levy a poll tax; but each county may levy a fee of not more than twenty-five cents for collecting the state poll tax, such fee to be paid to the tax collector at the time the poll tax is paid. Except as otherwise provided in Section 75 of the Election Code of Texas

(Article 7.10, Vernon's Texas Election Code), the county fees shall be deposited in the county treasury for general revenue purposes of the county and shall not be deemed to be fees of office or be retained by the tax collector, regardless of whether the tax collector is compensated on a fee basis or on a salary basis."

The only official publication of this statute, as last amended, is in Texas Session Laws, 58th Legislature, Regular Session, 1963, at page 1041. It appears as an unofficial publication in Vernon's Texas Statutes, 1964 Supplement, at page 899, and in Vernon's Annotated Texas Civil Statutes, 1965 pocket part supplement to volume 20A, at page 8.

Section 2 of Article VI of the Constitution of Texas makes payment of the poll tax a prerequisite for voting by persons subject to the tax. The pertinent portion of Section 2 reads:

"Every person subject to none of the foregoing disqualifications who shall have attained the age of twenty-one (21) years and who shall be a citizen of the United States and who shall have resided in this State one (1) year next preceding an election and the last six (6) months within the district or county in which such person offers to vote, shall be deemed a qualified elector; and provided further, that any voter who is subject to pay a poll tax under the laws of the State of Texas shall have paid said tax before offering to vote at any election in this State and hold a receipt showing that said poll tax was paid before the first day of February next preceding such election. Or if said voter shall have lost or misplaced said tax receipt, he or she, as the case may be, shall be entitled to vote upon making affidavit before any officer authorized to administer oaths that such tax receipt has

been lost. Such affidavit shall be made in writing and left with the judge of the election. The husband may pay the poll tax of his wife and receive the receipt therefor. In like manner, the wife may pay the poll tax of her husband and receive the receipt therefor. * * *"

Other constitutional and statutory provisions implementing this requirement need not be quoted.

The only official publication of this section, as last amended, is in Texas Session Laws, 54th Legislature, Regular Session, 1955, at page XLI. It appears as an unofficial publication in Vernon's Texas Statutes, 1956 Supplement, at page XX, and in Vernon's Annotated Texas Constitution, volume 2, at page 339.

Section 34a of the Texas Election Code, enacted in 1963 to take effect upon ratification of the Twenty-fourth Amendment to the United States Constitution, provides for a system of registration for persons subject to the poll tax to qualify for voting in federal elections without payment of the tax. The pertinent portions of this statute read:

"Subdivision 1. Qualification and requirements for voting for federal offices. Notwithstanding any other provision of this Code or of the Constitution of this state, the payment of the poll tax shall not be required as a condition for voting for United States Senator, for United States Representative (including Congressman-at-Large), or for President and Vice-President or electors for President and Vice-President of the United States, in any general, special, or primary election. To be eligible to vote for such offices, a person must be a qualified elector under the Constitution and laws of this state in all other respects. If he is not subject to payment of the poll tax, he must have obtained an

exemption certificate in accordance with the provisions of this Code if he is required to hold an exemption certificate as a condition for voting generally. If he is subject to payment of the poll tax, he must have paid the tax and obtained a receipt therefor prior to the first day of February preceding the election; or he must have obtained a poll tax receipt without payment of the tax, in the manner and within the time provided in Subdivision 2 of this section.

"Subdivision 2. Issuance of poll tax receipts without payment of the tax. A person who is subject to payment of the poll tax and who is in other respects a qualified elector may apply to the tax collector of the county of his residence at any time between the first day of October and the thirty-first day of January following for issuance of a poll tax receipt without payment of the tax, to be used to identify him in voting for offices enumerated in Subdivision 1 of this section during the voting year beginning on the first day of February thereafter; provided, however, that a receipt to identify the voter at elections held during the voting year in which this section takes effect may be obtained at any time within the period of thirty days after the effective date, but must have been obtained at least four days before any election at which he offers to vote; and if this section takes effect during the month of January, a receipt to identify the voter at elections held during the ensuing voting year may be obtained at any time within the period of thirty days after its effective date. The applicant shall furnish to the tax collector all the information necessary to enable the tax collector to fill out the blanks in the poll tax receipt, and the tax collector shall issue the receipt as in cases where the poll tax is paid, except that he shall place the following notation on the face of the original and duplicate receipt: "Poll tax

not paid." The application may be made in either of the manners authorized in Section 43 of this Code, and all laws pertaining to issuance of poll tax receipts shall apply to issuance of receipts without payment of the tax insofar as they can be made applicable, except as otherwise provided in this section. At the time the tax collector makes up the lists of qualified voters, he shall make up separate lists of those persons to whom poll tax receipts have been issued without payment of the tax and shall furnish the lists to the election boards at the same time that he furnishes other lists."

This statute is published officially in Texas Session Laws, 58th Legislature, Regular Session, 1963, at page 1111. It is published unofficially as Article 5.02a of the Texas Election Code in Vernon's Texas Statutes, 1964 Supplement, at page 378, and in Vernon's Annotated Texas Civil Statutes, 1965 pocket part supplement to volume 9, at page 23.

Question Presented by the Appeal

The following question is presented by this appeal:

Does the requirement for payment of a poll tax as a condition for voting in state and local elections, as provided in Section 2 of Article VI of the Constitution of Texas, on its face violate the Constitution of the United States?

Statement of the Case

Appellant believes that the question presented by this appeal was settled by the decision of this Court on March 24, 1966, in *Harper v. Virginia State Board of Elections* and *Butts v. Harrison,* Nos. 48 and 655, October Term, 1965. However, appellant disagrees with

the legal principles announced in the majority opinion in those cases.

The District Court's decision in this cause was rendered on February 9, 1966. At that time, the only system for registration of voters for state and local elections in the State of Texas was based on liability for the poll tax. Names of persons subject to the tax were placed on the lists of registered voters for each county from duplicate poll tax receipts retained in the office of the county tax collector upon payment of the tax, and persons not subject to the tax registered by obtaining certificates of exemption from payment of the tax. Annual reregistration was required, and complete new lists were compiled each year.

The decision created an immediate necessity for enactment of a statute to provide for registration for voting in the 1966 elections by persons which the decision rendered eligible to vote without payment of the poll tax. On February 10, 1966, the Governor of Texas called a special session of the Texas Legislature, to convene on February 14, 1966, for the purpose of enacting emergency legislation for supplemental registration of voters for the 1966 elections, and for enacting a permanent system for voter registration to become effective for future years in the event the District Court's decision became final. When the session convened, the Attorney General of Texas had already announced that the State would appeal the decision to the Supreme Court. Those responsible for the drafting of the proposed legislation acted on the assumption that there would be no intervening circumstance which would warrant abandonment of the appeal before the State's Jurisdictional Statement was filed in the Su-

preme Court; and on that assumption the permanent provisions of the statute were to become effective only upon the happening of one or the other of two contingencies, whichever first occurred, stated in Section 6 of the statute as follows (Sec. 6 of Senate Bill No. 1, Acts 59th Legislature, 1st Called Session, 1966; not yet published in either official or unofficial sets of Texas statutes):

"Sec. 6. EFFECTIVE DATE; CONTINGENCIES. (a) Sections 1 through 4 of this Act shall become effective and operative as a law upon the happening of either of the following contingencies, whichever first occurs:

(1) if the Constitutional Amendment abolishing payment of the poll tax as a prerequisite for voting as proposed by House Joint Resolution No. 13, Fifty-ninth Legislature, Regular Session, 1965, becomes a part of the Constitution of Texas;[1] or

(2) if the Supreme Court of the United States affirms or refuses to review the judgment of the United States District Court for the Western District of Texas, Austin Division, in Civil Action No. 1570, styled United States of America v. The State of Texas, et al., or if by other action taken upon appeal of that case the Supreme Court rules that the provisions of the Constitution and statutes of this State requiring payment of a poll tax as a condition for voting in state and local elections are in violation of the Constitution of the United States.

"(b) If neither of these contingencies occurs, Sections 1 through 4 of this Act shall not become effective or operative in whole or in part.

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[1]This proposed amendment to the Texas Constitution will be voted on at the general election to be held on November 8, 1966. However, by its express terms it will not become effective until February 1, 1968.

"(c) If the contingency first stated above occurs prior to occurrence of the second contingency, Section 2 of this Act shall become effective on October 1, 1967, and Sections 1, 3, and 4 shall become effective on February 1, 1968.

"(d) If the second contingency occurs prior to occurrence of the one first stated, the Attorney General of Texas shall certify its occurrence to the Governor and to the Secretary of State of the State of Texas, and the Governor forthwith shall issue his proclamation declaring that Sections 1 through 4 of this Act will take effect as stated herein, and shall file the proclamation with the Secretary of State; whereupon Section 2 of this Act shall become effective on the date that the Governor's proclamation is filed, or on October 1, 1966, whichever is the later date; and Sections 1, 3, and 4 shall become effective on February 1, 1967, or on the effective date of the injunctive order, whichever is the later date."

The Legislature completed action on Senate Bill No. 1 on February 23, 1966, and adjourned on that day. The bill was signed by the Governor on February 24, 1966. The next regular session of the Legislature convenes on January 10, 1967. The current voter registrations will expire on January 31, 1967. Both under the law now in effect and under Senate Bill No. 1, the registration period for elections held between February 1, 1967, and January 31, 1968, will begin on October 1, 1966, and will end on January 31, 1967.

From the foregoing schedule of dates, it is seen that Texas will be without a valid voter registration system for the 1967 elections unless this appeal is prosecuted to final action or unless the Legislature is convened in another special sesson before October 1, 1966.

Accordingly, appellant is filing this Jurisdictional

Statement with the request that the Court take such action thereon as is appropriate.

Respectfully submitted,

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PROOF OF SERVICE

I, Hawthorne Phillips, one of the attorneys for the State of Texas, appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 12th day of April, 1966, I served copies of the foregoing Jurisdictional Statement on the several parties thereto, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to each of the following Attorneys of Record in this cause:

Honorable Thurgood Marshall
Solicitor General
Department of Justice
Washington, D.-C.

Counsel for Appellee

Honorable Ernest Morgan United States Attorney Federal Building San Antonio, Texas	Counsel for Appellee
Honorable Stephen J. Pollak First Assistant, Civil Rights Section Department of Justice Washington, D. C.	Counsel for Appellee
Honorable Tom Gee Attorney at Law Austin National Bank Building Austin, Texas 78701 and Honorable John E. Clark Attorney at Law Capital National Bank Building Austin, Texas 78701	Counsel for Appellant Travis County Republican Executive Committee
Honorable Trueman O'Quinn Attorney at Law Perry-Brooks Building Austin, Texas 78701	Counsel for Defendant Travis County Democratic Executive Committee
Honorable Kenneth Jones Honorable Dudley Fowler Assistant City Attorneys Municipal Building Austin, Texas 78701	Counsel for Defendants Mayor of Austin, Presiding Judge and Associate Judge of Election Precinct Number 239 of Travis County, Texas

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APPENDIX

A. Judgment of the District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. THE STATE OF TEXAS, et al., Defendants.	}	Civil Action No. 1570

DECREE

This cause having come on for trial at which all parties were present by counsel; and the Court having heard the evidence and having considered the pleadings, evidence and argument of counsel and being of the view that a Decree should be entered in accordance with the opinion of the Court prepared for the Court by Judge Thornberry, which also constitutes the Court's findings of fact and conclusions of law under F.R.Civ.P. 52(a), filed this date, it is therefore ORDERED, ADJUDGED and DECREED:

FIRST. That Article VIII, Section 1, and Article VI, Sections 2 and 3 of the Texas Constitution, Article 2.01 of the Texas General Taxation Code, Article 13.21 of the Texas Election Code and all other Texas statutes implementing the poll tax are hereby declared unconstitutional and invalid insofar as they require the payment of a poll tax as a prerequisite to voting in general,

special and primary elections, Federal, state or local, in the State of Texas.

SECOND. The defendants herein, their respective agents, servants, employees and successors, and all other persons having knowledge thereof who have any responsibility under election procedure laws of the State of Texas or its political subdivisions, are hereby enjoined and prohibited from requiring the payment of a poll tax as a prerequisite to voting in general, special and primary elections, Federal, state or local, in the State of Texas, and from applying or enforcing the provisions of the Texas Constitution and statutes referred to in paragraph FIRST hereof insofar as they require the payment of a poll tax as a prerequisite to voting in general, special and primary elections, Federal, state or local, in the State of Texas.

THIRD. This DECREE shall be effective immediately, but paragraph SECOND hereof is stayed for the period of 14 days to enable the parties to submit an application for stay to the Circuit Justice, the Supreme Court, or a Justice thereof.

FOURTH. The Court retains jurisdiction of this cause for such other and further orders as may be required.

DONE at Austin, Texas this 9th day of February, 1966.

JOHN R. BROWN,
United States Circuit Judge.

HOMER THORNBERRY,
United States Circuit Judge

ADRIAN A. SPEARS,
United States District Judge

B. Opinion of the District Court

[Heading Omitted]

Before BROWN and THORNBERRY, Circuit Judges, and SPEARS, District Judge.

THORNBERRY, Circuit Judge:

In this action the Attorney General of the United States challenges the validity of the Texas poll tax,[1] pursuant to the provisions of Section 10(b) of the Voting Rights Act of 1965, 79 Stat. 437, and 42 U.S.C. 1971(c). The United States seeks to show that the requirement of the payment of a poll tax as a precondition for voting in Texas is a device conceived primarily to deprive Negroes of the franchise and that it has continued to have that effect because the inadequate and disparate educational opportunity given Negroes until recent years by the State has placed them at an economic disadvantage and made the payment of the $1.75 poll tax a heavier burden on the Negro than on the whites, in violation of the Equal Protection Clause. The United States also alleges that the Texas poll tax deprives Negroes of the right to vote under the Fifteenth Amendment and that, irrespective of any discrimination, it is invalid under the Due Process Clause since it does not have any adequate state justification and is in fact a restraint and a charge on the exercise of the fundamental right to vote. Although we find that

[1]Similar suits are being prosecuted in Alabama, Mississippi and Virginia. United States v. Alabama, M.D. Ala. 1965, No. 225-N; United States v. Mississippi, S.D. Miss. 1965, No. 3791; Harper v. Virginia State Board of Elections, Butts v. Harrison, E.D. Va. 1964, 240 F. Supp. 270, *appeal pending*, 34 L.W. 3234 (brought prior to Voting Rights Act of 1965, United States as amicus curiae).

the Texas poll tax is not violative of the Equal Protection Clause or the Fifteenth Amendment, for reasons which we shall discuss at length, we hold that the payment of a poll tax as a precondition to voting must fall as an unjustified restriction on one of the most basic rights guaranteed by the Due Process Clause.

1.

The United States Attorney General filed a complaint invoking the jurisdiction of this three-judge District Court under the provisions of the Voting Rights Act of 1965, § 10, 79 Stat. 442-43.[2] Jurisdiction

[2]Sec. 10. (a) The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting.

(b) In the exercise of the powers of Congress under section 5 of the fourteenth amendment and section 2 of the fifteenth amendment, the Attorney General is authorized and directed to institute forthwith in the name of the United States such actions, including actions against States or political subdivisions, for declaratory judgment or injunctive relief against the enforcement of any requirement of the payment of a poll tax as a precondition to voting, or substitute therefor enacted after November 1, 1964, as will be necessary to implement the declaration of subsection (a) and the purposes of this section.

(c) The district courts of the United States shall have jurisdiction of such actions which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date,

is also asserted under 42 U.S.C. 1971,[4] 28 U.S.C. 1345[5] an 28 U.S.C. 2281.[6]

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to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

[4]Sec. 1971. (a) (1) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

* * *

(c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. If in any such proceeding literacy is a relevant fact there shall be a rebuttable presumption that any person who has not been adjudged an incompetent and who has completed the sixth grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico where instruction is carried on predominantly in the English language, possesses sufficient literacy, comprehension, and intelligence to vote in any Federal election. In any proceeding hereunder the United States shall be liable for costs the same as a private person. Whenever, in a proceeding instituted under this subsection any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a) of this section, the act or practice shall also be deemed that of the State and the State may be joined as a party defendant and, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State.

(d) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the

Standing to bring this suit is established by Section 10(b) of the Voting Rights Act of 1965 under which the Attorney General is "authorized and directed to institute forthwith . . . actions . . . against the enforcement of any requirement of the payment of a poll tax as a precondition to voting . . ." in areas where the requirement of such taxes denies or abridges the constitutional right of citizens to vote. The defendants are the State of Texas, the Judges of Election for Precinct Number 239 of Travis County, Texas, the Mayor of Austin, Texas, the Travis County Democratic and Republican Executive Committees and their Chairmen, and the Tax Assessor-Collector of Travis County, Texas.[6]

II.

"Although frequently thought of as a tax on the privilege of voting, the poll tax is actually a head tax. In

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party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

[4]Sec. 1345. Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress.

[5]Sec. 2281. An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement of execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title.

[6]The defendants other than the State of Texas were named because they typify officials throughout the State who have statutory duties in the enforcement of the poll tax.

this context, "poll" means "head" rather than the term customarily used to describe a place of voting.[7] The first poll tax in Texas, one dollar on white males from 21 to 55, was levied on June 12, 1837,[8] soon after Texas declared its independence from Mexico and became a Republic. From that time up until the Constitutional Amendment in 1902, there was no relation between the poll tax and the right to vote.[9] Negroes were enfranchised in Texas in 1869[10] and became liable for the poll tax in 1870.[11] By 1870, there were 50,000 Negro and 60,000 white voters on the rolls. Proposals to make payment of the poll tax a qualification for voting were first raised in the 1875 Constitutional Convention[12] and frequently thereafter.[13] Finally, in 1901 the Texas Legislature, by Joint Resolution, proposed a constitutional amendment to make payment of the poll tax a prerequisite to voting,[14] and in 1902 the voters of Texas approved.[15]

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[7]Texas Legislative Council, Staff Research Report: A Survey of Taxation in Texas, Part IIB, 68 (1952) [hereinafter cited as Texas Legislative Council].

[8]Laws of the Republic of Texas 1837, at 259, 262.

[9]Texas Legislative Council, 71-73.

[10]Tex. Const. art. III, §1 (1869); Tex. Laws 1870, at 24.

[11]Tex. Laws 1870, at 199.

[12]Journal of the Constitutional Convention of 1875, at 238; Texas Legislative Council 72.

[13]Texas Legislative Council 73. Proposals were introduced in the Texas Legislature in 1879 (Tex. Laws 1879, at 46; Tex. H. Jour. 1879, at 716); in 1883 (Tex. H. Jour. 1883, at 716); in 1889 (Tex. H. Jour. 1889, at 588); in 1891 (Tex. H. Jour. 1891, at 59); in 1895 (Tex. H. Jour. 1895, at 40); in 1899 (Tex. H. Jour. 1899, at 445); and finally in 1901 as a proposed amendment to the Texas Constitution (Tex. H. Jour. 1901, at 56, 59, 175; Tex. S. Jour. 1901, at 29).

[14]Tex. S. Jour. 1901, at 29; Tex. H. Jour. 1901, at 175.

[15]Tex. S. Jour. 1903, at 877.

We cannot improve on the following excellent summary of the Texas poll tax requirements found in the United States brief: In order to vote in general, special and primary elections of the cities, counties and State, a person must be (1) twenty-one years old, (2) a citizen, (3) a resident of the State for one year and of the district or county in which the election is held for six months, and (4) a holder of a poll tax receipt, if liable for the tax.[16] The same preconditions apply to voting for federal officials except that the payment of poll taxes[17] has been prohibited by the adoption of the Twenty-Fourth Amendment. Insane persons, paupers supported by the county, and persons convicted of a felony whose civil rights have not been restored are disqualified from voting.[18]

The poll tax is imposed on all residents of the State between the ages of twenty-one and sixty as of January

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[16]Tex. Const. art. VI, §2; Tex. Election Code art. 5.02 (Supp. 1965).

[17]U. S. Const. amend. XXIV:

> Sec. 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.
>
> Sec. 2. The Congress shall have power to enforce this article by appropriate legislation.

A poll tax receipt for federal elections must be obtained during the same period that regular poll taxes are collected. The receipt, generally marked "Poll Tax Not Paid," is honored for federal elections only. Tex. Election Code art. 5.02a (Supp. 1965).

[18]Tex. Const. art. VI, §1; Tex. Election Code art. 5.01 (Supp. 1965).

1 of the tax year.[18] The amount of the tax is $1.50,[19] but counties are authorized to require payment of an additional $.25 to defray the cost of collection. In addition, cities are authorized to impose a poll tax[20] of $1.00 as a precondition to voting in city elections. The tax must be paid between October 1 of the tax year and January 31 of the following year.[21] The deadline for payment precedes general elections in November by nine months. The Texas Constitution allocates one dollar of the tax to public education.[22]

Persons over the age of sixty on January 1 of the tax year are exempt from the tax,[23] but, if they live in a city of over 10,000 population, they must obtain "overage" certificates of exemption during the same four-month period that poll taxes are paid.[24] Persons over sixty who live in small towns or rural areas are allowed to vote without paying poll taxes or procuring a certificate of exemption. Persons who become 21 after the beginning of the tax year but before the election, regardless of the population of their area of residence,

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[18]Tex. Gen. Tax Code art. 2.01 (Supp. 1965); Texas Election Code art 5.02 (Supp. 1965). Imposition of a poll tax by the legislature is expressly authorized by the Texas Constitution. Tex. Const. art. VIII, §1.

[19]The tax is limited to $1.00 for insane and blind persons, persons suffering from certain permanent physical disabilities, and members of the active State militia. Tex. Gen. Tax Code art. 2.01 (Supp. 1965); Tex. Election Code art 5.02 (Supp. 1965).

[21]Tex. Rev. Civ. Stat. art. 1030 (1963).

[22]Tex. Election Code art. 5.09 (Supp. 1965).

[20]Tex. Const. art. VII, §3. The remaining $.50 is allocated for general revenue purposes. Tex. Election Code art. 5.09 (Supp. 1965).

[24]Tex. Election Code art. 5.09 (Supp. 1965).

[23]Tex. Election Code art. 5.16 (Supp. 1965).

must obtain a certificate of exemption at least thirty days before the election.[26] The same rule applies to persons who become residents of the State after January 1 of the tax year.[27]

Poll taxes are paid to and certificates of exemption are issued by the County Tax Assessor-Collectors who are agents of the State for this purpose.[28] Payment of poll taxes may be tendered in person or mailed, and, in either case, payment may be made by the taxpayer himself or by certain close relatives.[29] The taxpayer must use his own money to pay the tax, since wilfully loaning or advancing money to another person for poll tax payment is punishable by a $500 fine.[30]

A County Tax Assessor-Collector "may at such places as shall in his discretion be necessary or advisable" appoint deputies for the purpose of accepting poll tax payments and issuing certificates of exemption.[31] In counties containing a city of 10,000 or more inhabitants, other than the county seat, provision is made by statute for a poll tax deputy to accept payments and issue exemption certificates in the city, but only during the month of January.[32] These statutes appear to be the only provisions of Texas law related directly to procedures for the assessment and collection of poll taxes. The State Comptroller has broad statutory authority to prescribe forms and issue instructions to County Tax Assessor-Collectors,[33] and has issued

[26]Tex. Election Code art. 5.17 (Supp. 1965).
[27]*Ibid.*
[28]Tex. Election Code arts. 5.11-5.12 (Supp. 1965).
[29]*Ibid.*
[30]Tex. Penal Code art. 204 (1952).
[31]Tex. Election Code art. 5.11 (Supp. 1965).
[32]Tex. Election Code art. 5.19 (1952).
[33]Tex. Rev. Civ. Stat. art. 7201 (1960).

a manual containing forms and instructions relating to assessment, collection and record-keeping procedures for various State taxes.

Texas does not have a separate system for registration of voters. At the time he pays his poll taxes, a prospective voter is required to show that he satisfies the voting preconditions of age, citizenship and residence. This information is recorded on his poll tax receipt, a copy of which is retained for use by the Tax Assessor-Collector in compiling lists of qualified voters.[34] Before April 1 of each year, the Tax Assessor-Collector of each county is required to compile and certify lists of the names of qualified voters, by election precinct, who have paid their poll taxes or received certificates of exemption during the statutory four-month period.[35] These lists are ultimately transmitted to the precinct judges of election.[36] With certain minor exceptions,[37] only persons whose names appear on such

[34]Tex. Election Code arts. 5.14, 5.16 (Supp. 1965).

[35]In addition, the County Tax Assessor-Collectors are required to file a monthly report with the State Comptroller during the four-month poll tax season (October through January). The form for this report is prescribed by the State Comptroller and reflects the number of poll taxes paid and certificates of exemption issued during the monthly reporting period.

[36]Tex. Election Code art. 5.22 (Supp. 1965).

[37]Persons who pay poll taxes in one county and thereafter move to another county or to another election precinct in the same county may, upon complying at the polls with certain conditions, vote in the precinct of their new residence, even though their names do not appear in the precinct list of qualified voters. This procedure does not apply to persons who move into or change election districts within a city of over 10,000 population. Such persons must present their poll tax receipts, certificates of exemption, or affidavits of loss thereof to the Tax Assessor-Collector and have their names added to the list of qualified voters. Tex. Election Code art. 5.15 (Supp. 1965).

lists or on supplemental lists are allowed to vote."

III.

The United States urges a number of theories as the basis of its attack on the constitutionality of the poll tax. It contends that the State of Texas by failing to provide Negroes with educational opportunities equivalent to those given to white students has limited their income-producing potential and that, as a result, the payment of the poll tax is a more difficult burden on the Negro than on the non-Negro. This disparity of educational and economic opportunity when coupled with a historical structure of social and political segregation is asserted to have deprived Negroes of the equal protection of the law guaranteed by the Fourteenth Amendment.

To establish this theory, the United States offered evidence of the relationship between educational level and income potential and statistics showing the inferior educational and vocational training formerly provided Negroes. Charts and figures were presented to show the disparity in annual instructional expenditures per pupil, in teacher salaries, in number of pupils per teacher, and in the value of school property and equipment."

As noted *supra*, p. 10, persons over 60 who live in small towns and rural areas are not required to pay poll taxes or procure certificates of exemption.

"If a judge of election allows a person to vote whose name is required to be listed but is not so listed, the judge is subject to a $500 fine. Tex. Penal Code art. 216 (1952).

"

TEXAS STATE TOTALS

Yearly Instructional Expenditures Per Pupil

	White	*Negro*
1930-31	$ 43	$ 20
1934-35	36	18

As evidence of the effect of the poll tax on Negroes, the United States submitted statistics on the number of whites and Negroes between the ages of 21 and 60 who actually paid the poll tax as compared to the total number of potentially eligible voters of each race. Their figures for 187 out of 254 counties showed that 57.3% of the eligible whites paid the poll tax in 1964, while

1940-41	47	26
1946-47	80	62
1952-53	175	133
1956-57	205	190
Teachers Salaries		
1930-31	$1033	$ 623
1934-35	900	557
1940-41	1140	704
1946-47	1905	1521
1951-52	1707	1640
Number of Pupils Per Teacher—Average Daily Attendance		
1930-31	24	31
1934-35	25	31
1940-41	24	27
1946-47	24	25
1954-55	22	22
1960-61	21	22
Number of Pupils Per Teacher—Enrollment		
1930-31	32	44
1934-35	31	41
1940-41	—	—
1946-47	—	—
1954-55	25	26
1960-61	23	25
Value of School Property and Equipment Per Year Per Child		
1930-31 Property	$ 149	$ 38
Equipment	7.10	1.28
1935-36 Property	159	55
Equipment	9	2
1940-41 Property	201	64
Equipment	14	3
1945-46 Property	225	75
Equipment	22	6

45.3% of the eligible Negroes paid."[40] The United States contends that this variation of 12% demonstrates the discriminatory effect of the poll tax on Negroes whose income potential has been stymied by lack of educational opportunity.

The United States also argues that, aside from considerations of race, the poll tax necessarily discriminates against the poor, denying them equal protection of the law. To support this contention, the United States offered evidence that one purpose of the adoption of poll tax payment as a precondition for voting was to disenfranchise the poor who formed the backbone of the Populist Party.[41] The deposition of Mollie Orshansky, an expert on poverty, was introduced to show that, for persons living "below the poverty line,"[42] the poll tax fee must compete with the basic necessities of life, placing a substantial handicap upon the poor's exercise of the right to vote.[43]

As evidence that the purpose and effect of the Texas poll tax is to discriminate against Negroes in violation of the Fifteenth Amendment, the United States traced the historical development of the poll tax as a prerequisite to voting in the State of Texas. Although various

[40]The State asserted that 55.9% of the white population over 21 had qualified to vote and that 50.2% of the Negroes over 21 years had so qualified. The discrepancy between these figures may be explained by the State's inclusion in its calculations of those who received free poll taxes and exemptions —*i.e.*, those who had just reached 21 years of age, those over 60 years of age, and those who received the free Federal poll tax receipts.

[41]See *infra*, p. 20.

[42]The "poverty line" is defined in relation to calculations of a minimum adequate level of living.

[43]Miss Orshansky estimated that at least 600,000 Texans between the ages of 21 and 59 are living below the poverty line.

theories have been advanced to explain the passage of the 1902 constitutional amendment making payment of the poll tax a prerequisite for voting, the United States submitted excerpts from speeches of proponents and opponents of the amendment, from newspaper articles and editorials, and from the comments of historians to show its discriminatory objective."

"Delegates to the Constitutional Convention:

Delegate Mills "said he understood this as a thrust against the colored men, and was a violation of their rights." *State Gazette* (Austin, Texas), Oct. 7, 1875, quoted in McKay, The Texas Constitutional Convention of 1875, at 168.

Delegate Weaver contended:

"Neither do I consider it an argument of any value, that it might deprive the colored man of the right of suffrage. This is not an argument to me. I believe in the supremacy of the Anglo-Saxon race above negroe . . . but . . . I believe that the negroes, as Mr. Mills has said, will sell their hats, boots, and shoes to pay their tax and qualify themselves for the polls and will struggle to the last. Nay, I do not know but that some of them would even steal to get enough to pay their poll tax and vote."

State Gazette (Austin, Texas), Oct. 14, 1875, quoted in McKay, The Texas Constitutional Convention of 1875, at 171.

According to Judge Ballinger, also a delegate to the Convention:

"They had proposed a poll tax, intending merely, whatever they might say to the contrary, to reach the colored people and make it a fundamental condition of suffrage. . . . Whatever argument might be used in its defense, the clause was simply a restriction on the right of suffrage of the poor people of the State."

State Gazette (Austin, Texas), Oct. 8, 1875, quoted in McKay, The Texas Constitutional Convention of 1875, at 181.

Newspaper articles and editorials:

"It remains to be seen what effect the adoption of this amendment will have on the suffragists of Texas. It is asserted by some that its ostensible object of increasing the revenues of the State will not be realized; that, in fact, the prime movers in this piece of legislation never had the object of adding to the revenues of the State in view and that their

Insight into the motives of Texas' voters can be gained, the United States contends, by viewing the Texas amendment as part of the Southern movement to use the poll tax rather than intimidation to disfranchise the Negro.[45] Between 1889 and 1902, ten Southern states made the poll tax a prerequisite for voting.[46] Florida led off in 1889,[47] followed by Mississippi[48] and Tennessee[49] in 1890, Arkansas[50] in 1892, South Caro-

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real purpose was to disfranchise the shiftless element of voters."

San Antonio Daily Express, Nov. 8, 1902, p. 1, col. 5.

"Are those who pay nothing toward the support of the government the peers of those who do? Has the drone the right to share equally the privileges of the industrious? Must the low groveling equal-before-the-law, lazy, purchaseable negro, who pays no taxes, have the privilege of neutralizing the vote of a good citizen and taxpayer?"

Houston Telegraph, Oct. 10, 1875, quoted in McKay, Debates of the Texas Constitutional Convention of 1875, at 98.

Scholars and Historians:

Professor Frederic D. Ogden, the leading student of the poll tax, concluded that the "use of the poll tax in the South for suffrage restriction dates back primarily to the period from 1890 to 1908. . . . It is obvious that one reason why southern states adopted the poll tax and other suffrage restrictions in the period from 1890 to 1908 was to disfranchise the Negro. . . . In Mississippi, payment of the tax was made a voting prerequisite largely because of the belief that whites would be more apt to pay it than Negroes. The situation was similar in Texas."

Ogden, The Poll Tax in the South, 2, 4-5, 7 (Univ. Ala. Press 1958), (footnotes omitted), cited in *Harman v. Forssenius*, 1965, 380 U.S. 528, 529, 539, 540.

[45]Ogden, *op. cit. supra*, note 44, at 5, 7-10, 30-31.

[46]Texas Legislative Council 70.

[47]Fla. Laws 1889, ch. 3859, at 13.

[48]Miss. Const. §§241, 243 (1890); Miss. Code §§3160-63 (1942). The Supreme Court of Mississippi has explicitly acknowledged that the State's poll tax was intended to "obstruct the exercise of the franchise by the negro race." *Ratiffe v. Beale*, 1896, 74 Miss. 247, 266-67, 268.

[49]Tenn. Acts 1890, ch. 26, at 67.

[50]Ogden, *op. cit. supra*, note 44, at 2-3.

lina in 1895,[51] Louisiana in 1898,[52] North Carolina in 1900,[53] Alabama in 1901,[54] Virginia[55] and Texas in 1902, and Georgia[56] in 1908.

A 1952 Staff Report to the Texas Legislative Council[57] concluded that:

"No single factor accounts for acceptance of the

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[51]*Ibid.* Ogden relates that at the South Carolina Constitutional Convention of 1895 which adopted the tax, Benjamin R. Tillman decried Negro voting and stated the Convention's purpose to be "to put such safeguards around the ballot in the future, to so restrict the suffrage and circumscribe it, that this infamy can never come about again." *Id.* at 5-6.

[52]According to Ogden, the President of the Louisiana Constitutional Convention that adopted the tax commented of the new Constitution: "Doesn't it let the white man vote, and doesn't it stop the negro from voting, and isn't that what we came here for? (applause)" (footnote omitted). *Id.* at 6.

[53]*Id.* at 3.

[54]The author described the debate on the tax at the Alabama Constitutional Convention of 1901:

"One of the delegates in the Alabama Convention stated that he believed that the poll tax would disfranchise ten Negroes to one white man. Another delegate, who approved using the revenue for educational purposes, thought that the tax would both disfranchise Negroes and educate white children. Other members of this convention regarded the poll tax as the primary solution for their suffrage problem, frequently stated to be that of disfranchising the Negro without at the same time disfranchising any whites." (Footnoes omitted.) *Id.* at 6.

[55]Va. Const. §§18, 20-22, 35, 38, 173. Ogden also quotes a delegate-supporter of the poll tax at that convention: "It will not do away with the the negro as a voter altogether, but it will have the effect of keeping numbers of the most unworthy and trifling of that race from the polls. I do not know of anything better in view of the fifteenth amendment." Ogden, *op. cit, supra,* note 44, at 7.

[56]Ga. Acts 1908, at 27.

[57]The Texas Legislative Council is an organ of the State Legislature composed of fifteen legislators, the Speaker of the House and the President of the Senate and operates pursuant to State law with a professional staff. Tex. Rev. Civ. Stat. art. 5429(b) (1958).

poll tax as a prerequisite for voting. Obviously, the movement had been underway a long time, and such an issue, constantly pressed, has a way of eventually gaining public favor. However, it would appear that at least three important elements were involved. In the first place, there was the desire to purify the ballot. This was one of the reasons most often advanced by supporters of the proposed constitutional amendment. Apparently, they felt that 'vote-buying' and other fraudulent election practices would be substantially reduced by adding to the cost of vote-purchasing and by having more carefully regulated election administration. Second, there was a desire to disfranchise the Negro. And third, there was the essentially defunct Populist Party. The Populist or People's Party was an important element in the politics of many sections of the United States during the 1890's. The party was radical in its views and received its main backing from struggling farmers and from labor. This organization was anathema to many of the politicians of that day. Thus some proponents of a poll tax requirement for voting saw in it a method of disfranchising the people who had formed the backbone of the Populist Party.'"[58]

The State of Texas contends that there is no evidence that the poll tax in Texas discriminates against anyone because of race or economic status. The State notes that the poll tax is imposed on everyone between the ages of 21 and 60 and that, according to the Attorney General of the United States and the Voting Rights

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[58]Legislative Council Staff Report, p. 73 (Footnotes omitted).

The United States asserts that the tax was not linked to voting for the purpose or with the effect of increasing the number of payers. The percentage of those liable who were paying was rising before the tie to voting and, with rare exceptions, has declined since. Thus, 53.8% of those liable paid in 1896, but only 33.5% in 1950 and 42.3% in 1960.

Commission of 1961, no voting discrimination exists in Texas. In his testimony before the Senate Judiciary Committee, the Attorney General made the following statements:

> "Could I say two things. One, that the Department of Justice and the Civil Rights Commission has never had one single complaint on voters' discrimination arising in the State of Texas. The point 2 that I want to make, a higher percentage of Negroes are registered in proportion to the Negro population of Texas than whites. 58 percent of the Negroes are registered; 56 percent of the whites are registered.
>
> * * *
>
> "Mexicans registered are even a higher percentage than the Negroes."[39]

The United States asserts that these figures should not be given weight since they were based on "estimates" made by the Southern Regional Council which have proved inaccurate in the light of the evidence assembled for this lawsuit.

The Civil Rights Commission of 1961 concluded that

> The right to vote without distinctions of race or color—the promise of the 15th amendment—continues to suffer abridgment. Investigations, hearings, and studies conducted by the Commission since its 1959 *Report* indicate, however, that discriminatory disfranchisement is confined to certain parts of the country—indeed that it does not exist in 42 States. But in about 100 counties in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee,

[39]Hearing on S. 1564 before the Senate Committee on the Judiciary (Executive Session), vol. 2, at 117 (April 7, 1965).

there has been evidence, in varying degree, of discriminatory disfranchisement.[60]

The United States claims that the definition of "discriminatory disenfranchisement" did not include poll taxes and their effect, but was limited to overt and deliberate discrimination and that the Commission recommended that the Congress abolish the poll tax as a precondition to voting.

IV.

In the light of the evidence assembled by the United States and the defendants, this Court hereby makes the following findings and conclusions:

(1) A primary purpose of the 1902 Amendment to the Texas Constitution making payment of a poll tax a precondition to the right to vote was the desire to disenfranchise the Negro and the poor white supporters of the Populist Party. The fact that the Amendment was conceived for this invidious purpose over half a century ago is not alone a sufficient reason today for declaring it unconstitutional.

(2) This Court acknowledges that a dual structure of society developed in post-Civil War Texas and has resulted in a denial of equal opportunities to the Negro. The disparity in state support of white and Negro education until recent years stands as the most vivid example of this dual structure and leaves a substantial proportion of the present adult Negro population as products of its discrimination.

(3) Even though the poll tax was established as a

[60] Civil Rights Commission, Report on Voting, book 1 at 133 (1961).

prerequisite for voting in part to disenfranchise the Negro and even though the Negro has been relegated to a position of second-class opportunity by policies of segregation and inadequate education, the evidence does not establish that the poll tax in Texas discriminates against Negroes in violation of the Fifteenth Amendment or the Equal Protection Clause.

The evidence clearly shows, and the United States does not dispute, that at least during the last twenty years there has not been any attempt to use the poll tax overtly to deprive the Negro of his right to vote. Despite unlimited pre-trial discovery, no instances of outright discrimination have been shown or alleged. In fact, the United States has relied primarily on evidence of discrimination in public education and the resulting economic disadvantages to establish that the poll tax is more of a burden upon the Negro than upon the white voter. Although we consider the United States' method of proof a legitimate means for reaching such a conclusion, the facts will not support a finding of racial discrimination. The figures most favorable to the United States' position indicate that of the eligible persons between the ages of 21 and 60, 57.3% of the whites and 45.3% of the Negroes pay their poll tax. It is to be noted that both of these figures, although not commendable in terms of the total electorate, are substantial and that the difference between them is only 12%. If the disparity had been larger, we might have been more inclined to accept the evidence of a historical background of discrimination and the result of the poll tax sales as sufficient to justify a finding that the poll tax discriminates against Negroes. The disparity, however, is not glaring. Indeed, it is relatively small. The evidence points to other possible reasons

for this difference. In some counties, the percentage of both white and Negro voters paying the poll tax is substantially higher than the average,[61] while in others it is lower.[62] In a few counties, the percentage of Negro poll tax holders exceeds that of white poll tax holders.[63]

61

Sample Counties Where Both White and Negro Poll Tax Payments are Higher Than the Average

County	Persons 21-59 (in 1960)		Poll Tax Payers (1964)		Percent of Persons 21-59 Paying Poll Tax	
	White	Negro	White	Negro	White	Negro
Angelina	15,492	2,976	11,316	1,837	73.0	61.7
Chambers	3,911	936	3,035	690	77.6	73.7
Hardin	9,351	1,605	6,579	948	70.4	59.1
Lee	3,026	705	1,984	422	65.6	59.9
Montgomery	9,407	2,347	7,243	1,449	77.0	61.7
Newton	2,935	1,204	2,040	766	69.5	63.6
Sabine	2,339	711	1,766	493	75.5	69.3
San Jacinto	1,245	1,055	1,056	781	84.8	74.0

62

Sample Counties Where Both White and Negro Poll Tax Payment are Lower than the Average

County	Persons 21-59 (in 1960)		Poll Tax Payers (1964)		Percent of Persons 21-59 Paying Poll Tax	
	White	Negro	White	Negro	White	Negro
Coryell	10,361	665	3,720	22	35.9	3.3
El Paso	139,752	5,430	50,376	817	36.0	15.0
Potter	51,362	3,589	20,499	1,417	39.9	39.5
Walker	7,407	3,208	2,924	1,239	39.5	38.6

63

Sample Counties Where Negro Poll Tax Payers Exceed Whites

County	Persons 21-59 (in 1960)		Poll Tax Payers (1964)		Percent of Persons 21-59 Paying Poll Tax	
	White	Negro	White	Negro	White	Negro
Midland	31,155	2,975	18,526	2,059	59.5	69.2
Nacogdoches	9,232	2,903	5,113	1,821	55.4	62.7
Polk	4,125	1,575	2,571	1,324	62.3	84.1
Smith	30,668	9,755	17,232	5,744	56.2	58.9
Upshur	6,489	1,921	4,453	1,515	64.9	78.9

Perhaps this is merely a reflection of the general apathy level in different parts of the state. A mere 84,297 persons out of a possible 1,495,988 eligible took advantage of the free federal exemptions. The figures available from a number of counties with heavy Negro population show a meager response to this opportunity to vote without paying the poll tax.[44] In spite of all the evidence submitted by the United States, there are still too many unknown variables which may reasonably explain the relatively small discrepancy between white and Negro payment of the poll tax.

(4) The United States asserts that the poll tax discriminates against the poor as a class. Certainly, we may assume any non-progressive tax results in a greater hardship on the poor than on the non-poor. The question, however, is whether the poll tax is an unconstitutional discrimination against the poor because of the harder burden it lays on them. Since we have held that the Texas poll tax is invalid under the Due Process Clause, we find it unnecessary to consider this contention.

V.

Section 10(a) of the Voting Rights Act of 1965 states the Congressional finding that

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[44]

County	*Persons 21-59 (in 1960)*		*Percent of Persons 21-59 Paying Poll Tax (in 1964)*		*Persons not Paying Poll Tax (in 1964)*		*Federal Exemption Certificates*	
	White	*Negro*	*White*	*Negro*	*White*	*Negro*	*White*	*Negro*
Brazoria	33,111	4,562	70.5	35.1	9,783	2,960	135	0
Galveston	54,830	14,007	63.7	49.5	19,911	7,071	573	7
Harris	502,080	118,355	60.0	51.0	200,823	58,052	10,428	1,604
Harrison	12,225	7,482	64.6	36.9	4,328	4,721	59	23
Jefferson	94,278	25,894	63.6	48.1	34,292	13,435	495	116
McLennan	60,425	10,079	49.7	41.4	30,413	5,904	660	16
Tarrant	238,274	27,413	52.2	34.4	113,859	17,973	6,069	411
Travis	88,492	12,099	77.0	57.9	20,333	5,099	951	67

> The requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting."[65]

The Attorney General of the State of Texas contends that the members of Congress had no evidence to substantiate their findings in relation to the Texas poll tax. In support of this allegation, he offered letters from fifty-nine legislators who answered his inquiry. Fifty-eight of the fifty-nine stated that no evidence had been offered to support the findings as to Texas. The United States, however, submitted excerpts from the legislative history of the Voting Rights Act of 1965, the Twenty-Fourth Amendment, and earlier poll tax bills to refute the State's contention. In part, these records show that Congress had evidence that of the six states with the lowest voter turnout in the 1964 elections, four have poll tax requirements:[66]

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[65] Voting Rights Act of 1965, §10(a), 79 Stat. 442.

[66]

State	*Voting Age Population*	*Total Vote Cast—1964 Presidential Election*	*Percentage of Voting Age Population*
*Alabama	1,915,000	689,818	36
Georgia	2,636,000	1,139,352	43
*Mississippi	1,243,000	409,146	33
South Carolina	1,380,000	524,748	38

Several Congressmen testified that poll taxes in Texas and in general were a burden on the poor and were discriminatory.[87] There was evidence before both the House and the Senate that the poll tax could not properly be justified as a qualification for voting[88] or as a revenue measure[89] and that historically it has been

*Texas	5,922,000	2,626,811	44
*Virginia	2,541,000	1,042,267	41

*Poll tax states.

Hearings before the Subcommittee of the House Committee on the Judiciary, 89th Cong., 1st Sess., ser. 2, at 29 (1965).

[87]See, *e.g.*, Senator Ralph Yarborough, Texas, 111 Cong. Rec. 9573 (1965); Senator Birch E. Bayh, 111 Cong. Rec. 9704 (1965); and Senator Joseph D. Tydings, 111 Cong. Rec. 9696-97 (1965).

[88]"Nothing in the payment of a poll tax evidences one's "qualification" to vote. A man with a million dollars in the bank cannot vote if he fails to pay the tax; a man who steals a couple of dollars to pay the tax has met this condition. A poll tax has nothing in common with true "qualifications": Age (reflecting maturity of judgment); residency (reflecting knowledge of local conditions), etc. Once it is demonstrated that the poll tax cannot be justified as a qualification for voting fixed by the States under article I of the Constitution, good cause for this restriction on the right to vote is hard to find.

H.R. Rep. No. 439, 89th Cong., 1st Sess. 22 (1965); See S. Rep. No. 162, 89th Cong., 1st Sess., pt. 3, at 34 (1965).

[89]"No one seriously contends that it is a revenue measure. Forty-six states deem it unwise." H.R. Rep. No. 439, 89th Cong., 1st Sess. 22 (1965).

Senator Edward M. Kennedy of Massachusetts provided the following statistics on public education revenues, 111 Cong. Rec. 9577 (1965):

Further evidence to show that States could not be possibly reliant upon these taxes can be seen from the fact that in 1954, for example, Alabama spent almost $95 million for its schools and collected half a million dollars in poll taxes; in 1955 Mississippi spent $26 million on its schools and collected half a million dollars in poll taxes; while Texas, spending over $205 million for free schools and vocational education, received only $1,400,000 of poll

a device to disenfranchise the Negro.[70]

The Congress' experience with the poll tax was summarized recently by the Supreme Court in *Harman v. Forssenius,* 1965, 380 U. S. 528, 538-40:

> Prior to the proposal of the Twenty-fourth Amendment in 1962, federal legislation to eliminate poll taxes, either by constitutional amendment or statute, had been introduced in every Congress since 1939. The House of Representatives passed anti-poll tax bills on five occasions and the Senate twice proposed constitutional amendments. Even though in 1962 only five States retained the poll tax as a voting requirement, Congress reflected widespread national concern with the characteristics of the tax. Disenchantment with the poll tax was many-faceted. One of the basic objections to the poll tax was that it exacted a price for the privilege of exercising the franchise. Congressional hearings and debates indicate a general repugnance to the disenfranchisement of the poor occasioned by failure to pay the tax. . . . Another objection to the poll tax raised in the congressional hearings was that the tax usually had to be paid long before the election—at a time when political

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tax revenue available for these schools; and Virginia in 1954 spent $67.7 million for schools, collecting only $972,000 from poll taxes.

[70]The 1965 Senate Committee Report quoted the following statements from a 1943 report of the Senate Judiciary Committee:

> We think a careful examination of the so-called poll tax constitutional and statutory provisions, and an examination particularly of the constitutional conventions by which these amendments became a part of the State laws, will convince any disinterested person that the object of these State constitutional conventions, from which emanated mainly the poll tax laws, were motivated entirely and exclusively by a desire to exclude the Negro from voting.

S. Rep. No. 162, 89th Cong., 1st Sess., pt. 3, at 33 (1965).

campaigns were still quiescent—which tended to eliminate from the franchise a substantial number of voters who did not plan so far ahead. The poll tax was also attacked as a vehicle for fraud which could be manipulated by political machines by financing block payments of the tax. In addition, and of primary concern to many, the poll tax was viewed as a requirement adopted with an eye to the disenfranchisement of Negroes and applied in a discriminatory manner. (Footnotes omitted.)

As the Supreme Court noted in *Block v. Hirsh*, 1921, 256 U. S. 135, 154:

> No doubt it is true that a legislative declaration of facts that are material only as the ground for enacting a rule of law . . . may not be held conclusive by the Courts. . . . But *a declaration by a legislature concerning public conditions that by necessity and duty it must know, is entitled at least to great respect.* (Emphasis added.)

In the light of the numerous bills affecting the poll tax during the last twenty-five years, the public attention focused on this controversal topic, the special acquaintance of legislators with all aspects of voting, and the fact that Congress is not confined to the type of evidence which would be admissible in a court, there can be little doubt that there was sufficient evidence before Congress from which it could make the findings found in Section 10(a) of the Voting Rights Act. "[T]he legislature, acting within its sphere, is presumed to know the needs of the people of the State . . . and this presumption cannot be overthrown, as it has been sought to be overthrown, by testimony of individual legislators . . ." or by the letters submitted in this case. *Townsend v. Yeomans*, 1937, 301 U.S. 441, 451. See *Clark v. Paul Gray, Inc.*, 1939, 306 U.S. 583, 594.

There being a rational basis for the Congressional findings, we deem them worthy of "great respect" in determining the validity of the poll tax requirement for voting.

We also have taken note of the mandate of Section 10(c) of the Voting Rights Act of 1965 that "it shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited" and, with the excellent cooperation of counsel on both sides, have endeavored to comply with it.

VII.

"[T]he maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system." *Stromberg v. California,* 1931, 283 U.S. 359, 369. Yet how ineffective is this "political discussion" protected by the First Amendment if its ultimate objective can be denied at the ballot box.

Even though not specifically mentioned in the Constitution, the right to vote clearly constitutes one of the most basic elements of our freedom—the "core of our constitutional system." *Carrington v. Rash,* 1965, 380 U.S. 89, 96. "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live." *Wesberry v. Sanders,* 1964, 376 U.S. 1, 17. See *Harman v. Forssenius,* 1965, 380 U.S. 528;

Carrington v. Rash, supra; Reynolds v. Sims, 1964, 377 U.S. 533; *Yick Wo v. Hopkins,* 1886, 118 U.S. 220. It would be ironic, indeed, if the Constitution did not protect the right to vote, since that right has long been acknowledged to be "preservative of all rights." *Yick Wo v. Hopkins, supra,* at 226.

The Supreme Court "has never held that the Bill of Rights or the Fourteenth Amendment protects only those rights that the Constitution specifically mentions by name." *Griswold v. Connecticut,* 1965, 381 U.S. 479, 486 n. 1 (concurring opinion, Goldberg, J.). Among the many rights which have been found to be constitutionally protected though not expressly mentioned in the Constitution are: the right to marital privacy, *Griswold v. Connecticut, supra;* the right to travel, *Kent v. Dulles,* 1958, 375 U.S. 116; *Aptheker v. Secretary of State,* 1964, 378 U.S. 500; the right to educate one's children as one chooses, *Pierce v. Society of Sisters,* 1925, 268 U.S. 510, and the "freedom to associate and privacy in one's associations." *NAACP v. Alabama,* 1958, 357 U.S. 449, 462. While some rights have been found to be implicit in one or more of the first nine amendments to the Constitution (see, *e.g., Griswold v. Connecticut, supra; NAACP v. Alabama, supra*), others have found protection within the concept of "liberty" in the due process clauses of the Fifth and Fourteenth Amendments (see, *e.g., Kent v. Dulles, supra; Pierce v. Society of Sisters, supra*).

To determine whether a right is protected by the due process clause, a court

> must look to the "traditions and [collective] conscience of our people" to determine whether a principle is "so rooted [there] . . . as to be ranked

> as fundamental." *Snyder v. Massachusetts,* 291 U.S. 97, 105. The inquiry is whether a right involved "is of such a character that it cannot be denied without violating these 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions'. . . ." *Powell v. Alabama,* 287 U.S. 45, 67.

Griswold v. Connecticut, supra, at 493 (concurring opinion, Goldberg, J.).

When measured against these standards and examined in the light of Supreme Court pronouncements describing it as our most "precious" right, *Wesberry v. Sanders,* 1964, 376 U.S. 1, 17, and as the "essence of a democratic society," *Reynolds v. Sims,* 1964, 377 U.S. 533, 555, it cannot be doubted that the right to vote is one of the fundamental personal rights included within the concept of liberty as protected by the due process clause.

VIII.

In Texas, the right to vote is denied to those who have not paid the poll tax or obtained an exemption. As stated by the Supreme Court

> fundamental personal liberties . . . may not be abridged by the States simply on a showing that a regulatory statute has some rational relationship to the effectuation of a proper state purpose. "Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling." *Bates v. Little Rock,* 361 U.S. 516, 524. The law must be shown "necessary, and not merely rationally related, to the accomplishment of a permissible state policy." *McLaughlin v. Florida,* 319 U.S. 184, 196. See *Schneider v. Irvington,* 308 U.S. 147, 161.

Griswold v. Connecticut, 1965, 381 U.S. 479, 497 (concurring opinion, Goldberg, J.). Thus, we must determine whether the Texas poll tax as a restraint on the right to vote may be upheld as "necessary . . . to the accomplishment of a permissible state policy."

The tying of the payment of a head tax to the exercise of the franchise has been rationalized in a number of ways since the days of its first proponents. As this Court has found, one of the prime purposes of the 1902 Amendment to the Texas Constitution was to disenfranchise the Negro and the poor white supporters of the Populist Party. Needless to say, that objective cannot now be used to justify the poll tax as a prerequisite to voting. Other advocates have suggested that the poll tax requirement (1) purifies and protects the ballot, (2) serves as a registration device, (3) limits the electorate to those interested enough to buy a poll tax and competent enough to accumulate the $1.75, and (4) is a legitimate method of enforcing an otherwise valid tax. In weighing these possible justifications, this Court must be sure that, when the State attempts to achieve a legitimate end, it does not use means "which sweep unnecessarily broadly and thereby invade the area of protected freedoms." *NAACP v. Alabama, supra,* at 307; *Griswold v. Connecticut, supra,* at 485, 498. "In an area so closely touching our most precious freedoms," "precision of regulation must be the touchstone . . . ," *NAACP v. Button,* 1963, 371 U.S. 415, 438; *Griswold v. Connecticut, supra,* at 498, and "the breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose." *Shelton v. Tucker,* 1960, 364 U.S. 479, 488.

Under the stringent requirements of these constitutional standards, none of the suggested justifications may be sustained. Purification and protection of the ballot may be accomplished by other means as the State of Texas has recognized by the passage of numerous penal provisions.[71] Indeed, the continuing occurrence of vote-buying prosecutions would indicate that the poll tax requirement has not even been an effective device for protecting the purity of the ballot.[72]

Although the poll tax system in Texas does serve as a substitute for a registration system, it is difficult to comprehend the necessity of collecting $1.75 merely to register potential voters, especially since only a portion of those qualified are required to pay the tax. As the Supreme Court noted in *Harman v. Forssenius,*

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[71]Under the Texas Penal Code it is a crime for an election official to intimidate a voter (art. 220); to refuse to permit voters to vote (art. 217); to influence voters (art. 218); to permit alteration or premature removal of ballots (art. 219); to compare the executed ballot with the voter list (art. 221); to change a ballot (art. 223); to fail to secure the ballots (art. 226); to make a false canvass (art. 227); or to make a false certificate (art. 228, 229). A person voting illegally is subject to a five-year penitentiary sentence (art. 232). It is a crime to instigate illegal voting (art. 233); to swear falsely as to qualifications to vote (art. 234); to procure a voter to swear falsely (art. 235); to procure an illegal vote (art. 237); to falsely impersonate another (art. 239); or to vote more than once (art. 241). A person altering or destroying ballots faces a five-year penitentiary sentence (art. 244). Riots, unlawful assembly and misconduct at elections are crimes (arts. 253-61).

[72]Vernon's Annotated Texas Statutes report numerous appellate actions of fraudulent vote buying involving the poll tax: *e.g., Duncan v. Willis,* Tex. 1957, 302 S.W. 2d 627; *Longoria v. State,* Tex. Cr. App. 1934, 71 S.W. 2d 268; *Johnson v. State,* Tex. Cr. App. 1915, 177 S.W. 490; *Beach v. State,* Tex. Cr. App. 1914, 171 S.W. 715; *Solon v. State,* Tex. Cr. App. 1908, 114 S.W. 349; *Fugate v. Johnston,* Tex. Civ. App. 1952, 251 S.W. 2d 792.

1965, 380 U.S. 528, 543, "the forty-six states which do not require the payment of poll taxes have apparently found no great administrative burden in insuring that the electorate is limited to bona fide residents." The availability of other registration devices which do not impede the right to vote undermines this basis for justifying the poll tax.

The State in its brief asserts that "it appears ridiculous to state that anyone who is interested in the welfare and the conduct of the government . . . would or could not save the sum of $1.75 during the course of a year" and that "any person, white or colored, who was incapable of managing his affairs and acquiring during the course of one year the insignificant sum of $1.75 certainly is not intelligent enough or competent enough to manage the affairs of the government." Regardless of whether the ability to accumulate a sum of money is a valid criterion for determining qualification to vote,[12] the actual administration of the poll tax laws clearly indicates that no such standard has ever been applied in Texas. The ignorant and incompetent spouse, parent or child may vote if some member of

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[12]The proposition suggests the period in history when only the landed gentry were considered fit to participate in the affairs of government.

In the same vein the Senate Committee Report stated that the poll tax, in essence, puts a price on the ballot, and if you can pay this price you are "qualified" to vote—if you cannot pay this sum you are somehow not a qualified citizen. This remnant from the days of property "qualifications" for voting purposes cannot stand. For the payment of a poll tax tells us nothing about a citizen's qualifications as an elector. This requirement, then, so heavily involved with various procedural devices for payment does only one thing—it is an effective barrier to voting. S. Rep. No. 162, 89th Cong., 1st Sess., pt. 3, at 34 (1965).

his family remembers to purchase a poll tax for him.[74] Anyone who becomes 21 years old after the beginning of the tax year but before the election[75] or who is over 60 years old[76] may vote without paying a poll tax fee[77] or without showing the intelligence or competence necessary to accumulate $1.75 in one year. Thus, it is obvious that the poll tax in Texas is not a "test" of the intelligence or the competence of potential voters.

The final basis of justification, and the only one seriously relied on by the State, is that the tying of the poll tax to the right to vote is a legitimate method of collecting the head tax which is imposed upon all Texans between the ages of 21 and 60. Over the years there have existed several means for enforcing the poll tax. An 1891 law, which was repealed in 1965, provided that delinquent poll tax payers would be liable to work three days per year on the roads.[78] The State Comptroller, among whose tasks is the supervision of poll tax collections, does not recall the use of this provision during his twenty-one years in the Comptroller's office.

Prior to 1947, poll taxes were assessed along with ad valorem taxes. Failure to pay the poll tax would result in the classification of the taxpayer as delinquent and make him liable to possible levy on his real or personal property. Assessment slips for ad valorem and poll taxes were mailed together to the taxpayer and could be paid at the same time. This convenient

[74]Tex. Election Code arts. 5.11-.12 (Supp. 1965).
[75]Tex. Election Code art. 5.17 (Supp. 1965).
[76]Tex. Election Code art. 5.09 (Supp. 1965).
[77]In 1960, 125,000 Texans turned 21 and 1,076,666 were 60 or over. U.S. Bureau of Census, U.S. Census of Population, 1960, Final Report, PC (1)—45B (Texas) Table 16.
[78]Tex. Laws 1891, ch. 97, §23, 10 Gammel, Laws of Texas 153 (1898), Tex. Rev. Civ. Stat. art. 6758 (Supp. 1965).

method of assessment was discontinued at the request of the State Comptroller and with the approval of the Attorney General. No reasons have been offered by the State to explain this action.[79] Since that time, assessment slips generally have not been mailed to taxpayers and poll taxes have been assessed only at the time of voluntary payment.[80] With the exception of setting up substations in some metropolitan areas for the collection of poll taxes, neither the State nor most of its Tax Assessors[81] make any other effort to increase the number of poll tax payers or to enforce its payment by non-voters.

Since the State has *voluntarily* abandoned the use of the most logical means for collecting the poll tax, *i.e.*, by assessing it along with the ad valorem taxes, and has made no attempt to enforce the tax except by use of the penalty of disenfranchisement, it is difficult to accept the State's contention that the tying of the poll tax to the right to vote is necessary for the collection of the tax.[82]

Even if we assume the validity of this position, we still would not find the poll tax as a prerequisite to

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[79]Three years prior to this change in method of assessment, the United States Supreme Court held that Negroes could not be excluded from primary elections. *Smith v. Allwright*, 1944, 321 U.S. 649.

[80]The Texas Legislative Council Report suggests the reinstatement of the pre-1947 assessment methods to increase payment of the poll tax. Texas Legislative Council 113.

[81]It is true, however, that in many counties the Tax Assessors give numerous interviews to the news media to publicize and to encourage the sale of poll taxes. In addition, various private and civic organizations have been active in the promotion of poll tax sales.

[82]Evidence has been offered to show that the rate of payment of the poll tax percentage-wise has decreased since its collection was tied to the exercise of the franchise. See note 57, *supra*.

voting to be justified as an encroachment on a fundamental right "necessary . . . to the accomplishment of a permissible State policy." The permissible state policy here is not the perpetuation of a head tax, as such, but the raising of revenue. When viewed in this perspective, it is clear that the poll tax as a restriction on the right to vote is not "necessary" to insure the collection of revenue. The mere fact that 46 other states have been able to raise funds without such a requirement demonstrates this obvious conclusion. That poll tax receipts constitute only a minute percentage of the revenue of the State of Texas[83] does not prove that the poll tax is not a revenue measure, as the United States asserts, but it does indicate that the State of Texas has also been able to find adequate means of collecting revenue which do not restrict the right to vote."[84]

The poll tax in Texas is indeed a very strange revenue tax, when compared with other admittedly legitimate taxes. It was tied to the franchise for a discriminatory reason. For unknown reasons, the State has abandoned the most reasonable means for its collection. Although the Texas Constitution requires all persons between 21 and 60 to pay the tax, only those who wish to vote ordinarily "volunteer" to pay it, and the State makes no other attempt to enforce it. Inasmuch as no

[83]The poll tax revenue constitutes .19% of the estimated 1965 general revenue fund and .76% of the available school fund. See Calvert, 1965-1967 Biennial Revenue Estimate 2, 10.

[84]It is interesting to note that the poll tax is administratively the most expensive of all the taxes levied by the State of Texas. It costs 19.4 cents per dollar to collect the poll tax, while it costs 7.1 cents for the next most costly tax (the Motor Vehicle Sales Tax), 2.4 cents for the average tax, and only .1 cents for the largest revenue tax (the Oil and Natural Gas Tax). Deposition of Robert Calvert, State Comptroller, Table III-5.

acceptable basis for justifying the poll tax as a prerequisite for voting has been offered, the due process clause requires that this unnecessary restriction on the fundamental right to vote be eliminated.

IX.

Since, in general, only those who wish to vote pay the poll tax, the tax as administered by the State is equivalent to a charge or penalty imposed on the exercise of a fundamental right. If the tax were increased to a high degree, as it could be if valid, it would result in the destruction of the right to vote. See *Grosjean v. American Press Co.*, 1936, 297 U.S. 233, 244.

> It has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution. *Frost & Frost Trucking Co. v. Railroad Comm. of California,* 271 U. S. 583. "Constitutional rights would be of little value if they could be . . . indirectly denied," *Smith v. Allwright,* 321 U.S. 649, 664, or "manipulated out of existence." *Gomillion v. Lightfoot,* 364 U.S. 339, 345.

Harman v. Forssenius, 1965, 380 U.S. 528, 540.

The State asserts that "the Legislature, and people of Texas, have had the choice, insofar as the poll tax was concerned, of selecting the method of collection. The Legislature and the people choose to deny the right to vote to those who do not pay rather than some more onerous method of collection." It is clear, however, that the Legislature and the people may not choose to deny a fundamental constitutional right as a means of collecting revenue. " 'One's right to life, liberty, and property . . . and other fundamental rights may not be admitted to vote; they depend on the out-

come of no election.' A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose that it be." *Lucas v. Forty-Fourth General Assembly,* 1964, 377 U.S. 713, 736-37. If the State of Texas placed a tax on the right to speak at the rate of one dollar and seventy-five cents per year, no court would hesitate to strike it down as a blatant infringement of the freedom of speech. Yet the poll tax as enforced in Texas is a tax on the equally important right to vote.

The Supreme Court has dealt with attempts to license or tax fundamental constitutional rights. In *Grosjean v. American Press Co.,* 1936, 297 U.S. 233, a tax on gross receipts of newspapers with circulation in excess of 20,000 copies per week was found to be an abridgement of the freedom of the press as "a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guaranties." *Id.,* at 250.

An ordinance requiring a permit to distribute handbills was held invalid on its face in *Lovell v. Griffin,* 1937, 303 U.S. 444, as a restraint on the freedom of the press. In *Murdock v. Pennsylvania,* 1945, 319 U.S. 105, an ordinance requiring religious colporteurs to pay a license tax as a precondition to the pursuit of their activities was stricken down as a denial of first amendment rights. In answer to the contention that "the fact that the license tax can suppress or control this activity is unimportant if it does not do so," the Court in *Murdock* stated:

> But that is to disregard the nature of this tax. It is a license tax—a flat tax imposed on the exercise

> of a right granted by the Bill of Rights. *A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution.*

Id., at 112-113. (Emphasis added.)

Since the poll tax in Texas is enforced only against those who wish to vote, it is, in effect, a penalty imposed on those who wish to exercise their right to vote. Even if the poll tax were seriously enforced as a revenue measure, the tying of its collection to the franchise would be invalid as a charge on a very precious constitutional right.

X.

The State of Texas contends that the 1937 Supreme Court case, *Breedlove v. Suttles,* 1937, 302 U.S. 277, controls the questions raised in this suit. The only issues, however, discussed by the Court in that case were whether the Georgia poll tax violated the equal protection clause, since it applied only to persons between the ages of 21 and 60 and to women who registered to vote; whether payment of the poll tax as a prerequisite of voting denied any privilege or immunity protected by the Fourteenth Amendment; and whether the poll tax requirements abridged the provisions of the Nineteenth Amendment. Although dicta may be found in the opinion supporting the validity of the poll tax as a prerequisite to voting, we do not believe that the holding in *Breedlove* applies to the issues raised here or that the dicta, in the light of more recent Supreme Court pronouncements concerning the right to vote (see *e.g., Wesberry v. Sanders, supra; Reynolds v. Sims, supra*), should guide our decision.

For the reasons stated herein, we hold that the poll

tax as a prerequisite to voting in the State of Texas infringes on the concept of liberty as protected by the Due Process Clause and constitutes an invalid charge on the exercise of one of our most precious rights—the right to vote. In view of the impending elections, appropriate declaratory and injunctive relief is being ordered by appropriate decree.

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NO. 1218

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

THE STATE OF TEXAS, ~~et al.,~~

Appellants

vs.

UNITED STATES OF AMERICA,

Appellee

On Appeal from the United States District Court for the Western District of Texas, Austin Division

MOTION FOR EXPEDITIOUS TREATMENT

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On Appeal from the United States District Court for the Western District of Texas, Austin Division

MOTION FOR EXPEDITIOUS TREATMENT

In the Jurisdictional Statement which the State of Texas has filed in this cause, it is pointed out that the effective date of the voter registraton system for elections held on or after February 1, 1967, enacted at a recent special session of the Texas Legislature following the decision of the District Court in this cause, is contingent on action taken by this Court on appeal of the cause. The period for annual registration under the recently enacted legislation (Senate Bill No. 1, Acts of the 59th Legslature, 1st Called Session, passed on February 23, 1966, and approved by the Governer on

February 24, 1966; not yet published)[1] is the same as it has been in the past—from October 1 through January 31. It therefore becomes important, in order for the State of Texas to have a valid and adequate system of registration for the elections to be held in 1967, that this appeal be disposed of before the adjournment of the current term on June 30, 1966.

The Travis County Republican Executive Committee and Robert G. Farris, two of the defendants in the

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[1]Section 6 of S.B. No. 1 provides that the permanent provisions of the bill shall become effective "if the Supreme Court of the United States affirms or refuses to review the judgment of the United States District Court for the Western District of Texas, Austin Division, in Civil Action No. 1570, styled United States of America v. The State of Texas, et al., or if by other action taken upon appeal of that case the Supreme Court rules that the provisions of the Constitution and statutes of this State requiring payment of a poll tax as a condition for voting in state and local elections are in violation of the Constitution of the United States." The date on which the provisions will take effect is stated as follows:

> "(d) if the second contingency [affirmance on appeal] occurs prior to the one first stated [adoption of proposed amendment to the Texas Constitution, abolishing payment of the poll tax as a condition for voting], the Attorney General of Texas shall certify its occurrence to the Governor and to the Secretary of State of the State of Texas, and the Governor forthwith shall issue his proclamation declaring that Sections 1 through 4 of this Act will take effect as stated herein, and shall file the proclamation with the Secretary of State; whereupon Section 2 of this Act shall become effective on the date that the Governor's proclamation is filed, or on October 1, 1966, whichever is the later date; and Sections 1, 3, and 4 shall become effective on February 1, 1967, or on the effective date of the injunctive order, whichever is the later date."

Sections 1, 3, and 4 of S.B. No. 1 pertain to voting qualifications and procedures, and Section 2 contains the provisions for registration of voters. Section 43a of the Texas Election Code, as contained in Section 2 of S.B. No. 1, reads as follows:

lower court, filed a Notice of Appeal on February 11, 1966, and in this motion it is assumed that any Jurisdictional Statement on behalf of these appellants will be filed not later than April 12, 1966. No other parties are appealing from the judgment of the District Court.

Appellant the State of Texas hereby waives the right to file a brief, as provided in Paragraph 3 of Rule 16, Rules of the Supreme Court, in opposition to whatever motion the appellee may file in response to the Jurisdictional Statement filed by the State of Texas, and requests that the time for filing a brief by any other party in opposition to the motion to affirm or dismiss be reduced if the Court deems that a reduction is necessary in order to give the Court ample time for final action on the appeal before adjournment of the term. Appellant also requests that the time for filing appellee's motion to affirm or dismiss, and for any other action which either party might be entitled to take, be

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"43a. Annual registration; period for registration; period for which registration is effective

"Voters shall register annually. The first period for registration under this law shall begin in each county immediately upon the effective date of this Section and shall end on the thirty-first day of January following; provided, however, that if this Section takes effect after January 1, 1967, as the result of a court decision, the registration period shall continue through the thirtieth day following the effective date. In each year thereafter, the period for registration shall be from the first day of October through the thirty-first day of January following. The first registration hereunder shall entitle the registrant, if otherwise qualified, to vote at elections held between the first day of February following the registration period and the last day of February of the following year. Each annual registration thereafter shall entitle the registrant, if otherwise qualified, to vote at elections held during the period of one year beginning on the first day of March following the registration period."

reduced if necessary to the accomplishment of that end.

Respectfully submitted,

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PROOF OF SERVICE

I, Hawthorne Phillips, one of the attorneys for the State of Texas, appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 11th day of April, 1966, I served copies of the foregoing Motion for Expeditious Treatment on the several parties thereto, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to each of the following Attorneys of Record in this cause:

Honorable Thurgood Marshall
Solicitor General
Department of Justice
Washington, D. C.
Counsel for Appellee

Honorable Ernest Morgan
United States Attorney
Federal Building
San Antonio, Texas
Counsel for Appellee

Honorable Stephen J. Pollak First Assistant, Civil Rights Section Department of Justice Washington, D. C.	Counsel for Appellee
Honorable Tom Gee Attorney at Law Austin National Bank Building Austin, Texas 78701 and Honorable John E. Clark Attorney at Law Capital National Bank Building Austin, Texas 78701	Counsel for Appellant Travis County Republican Executive Committee
Honorable Trueman O'Quinn Attorney at Law Perry-Brooks Building Austin, Texas 78701	Counsel for Defendant Travis County Democratic Executive Committee
Honorable Kenneth Jones Honorable Dudley Fowler Assistant City Attorneys Municipal Building Austin, Texas 78701	Counsel for Defendants Mayor of Austin, Presiding Judge and Associate Judge of Election Precinct Number 239 of Travis County, Texas
Honorable Wallace Shropshire County Attorney Travis County Courthouse Austin, Texas 78701	Counsel for Defendant Travis County Tax Assessor-Collector

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HAWTHORNE PHILLIPS

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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1218

THE STATE OF TEXAS, APPELLANT

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION

MOTION TO AFFIRM

Pursuant to Rule 16, paragraph 1(c) of the Rules of this Court, the appellee, United States, moves that the judgment of the three-judge district court be affirmed.

On August 10, 1965, the United States, acting pursuant to Section 10(b) of the Voting Rights Act of 1965 and 42 U.S.C. 1971(c), instituted an action seeking a judgment declaring the invalidity and enjoining the enforcement of those provisions of the constitution and laws of the State of Texas which condition the right to vote in State and local elections on prior payment of a poll tax. A three-judge district court was convened, and, on February 9,

214-518—66

1966, the court granted the injunction prayed for, determining that the Texas poll tax requirement for voting violated the Fourteenth Amendment.

Following that decision the Governor of Texas called a special session of the Texas Legislature to provide for the supplemental registration of voters for the 1966 elections and a permanent system of voter registration. Section 6 of the bill enacted by the special session on February 23, 1966, and approved by the Governor the next day (Senate Bill No. 1, Acts 59th Legislature, 1st Called Session, 1966; J.S. 9–10), conditioned the effective date of the permanent registration system on either of two contingencies: adoption of a proposed amendment to the Texas Constitution abolishing the poll tax as a condition for voting in State and local elections, or an adverse ruling on appeal to this Court of the decision in this case. On March 1, 1966, the State of Texas filed its notice of appeal to this Court. Appellant's Jurisdictional Statement discloses the dilemma confronting it in providing for a permanent system of registration should the happening of those contingencies be delayed and concedes that the issue presented on this appeal "was settled by the decision of this Court on March 24, 1966, in *Harper* v. *Virginia State Board of Elections* and *Butts* v. *Harrison*, Nos. 48 and 655, October Term, 1965" (J.S. 7).

In view of those controlling decisions and appellant's concession, and recognizing the need for expeditious consideration of this appeal, appellee moves

that the decision of the three-judge district court be summarily affirmed.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

APRIL 1966.

END